



July 17, 2019

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

We write to strongly oppose the pending resolution of the Committee on Oversight and Reform ("Committee") concerning the decision to reinstate a citizenship question on the 2020 Census. It is unfortunate that in spite of our Departments' substantial efforts to accommodate the Committee's interests, the Committee—and now the House of Representatives—has chosen to go forward with an unjustified contempt vote regarding a citizenship question that, as you know, will not be asked on the 2020 Census questionnaire.

We regret that the Committee continues to recommend the House wield its criminal contempt authority even though we remain willing to work towards an appropriate accommodation notwithstanding the privileged status of the documents at issue and the active litigation that remains pending in this matter. By taking this action, the House is both unnecessarily undermining inter-branch comity and degrading the constitutional separation of powers and its own institutional integrity.

Our Departments are committed to working to accommodate the oversight needs of the Congress in a manner that is consistent with our respective responsibilities, while also protecting the Executive Branch's confidentiality interests and privileges. In the spirit of that commitment, the Departments have made significant efforts to accommodate requests from the Committee concerning the Census matter. We strongly disagree with any suggestion that our Departments have obstructed this investigation.

It is unfortunate that the House has scheduled a vote to hold two sitting members of the President's Cabinet in contempt of Congress given the clear record of cooperation. As the Committee well knows, the limited materials still at issue are subject to a number of legal privileges that have been upheld in the pending litigation, as well as the President's assertion of executive privilege. Our Departments' records of cooperation with the Committee over the past several months demonstrates our commitments to the constitutionally required accommodation process and demonstrates that any contempt vote is, at best, premature.

The Departments' engagement with the Committee in a good-faith accommodation process is rooted in the separation of powers. As part of that process, both Departments have made multiple witnesses available for voluntary transcribed interviews and have produced more than 30,000 pages of documents to the Committee. Before the Committee abruptly and prematurely terminated the accommodation process last month, the Department of Justice intended to provide a significant number of additional documents identified as responsive to the Committee's subpoena.

Rather than seriously engage in the constitutionally mandated accommodation process, the Committee instead recommended that the House vote on a contempt resolution regarding the Departments' purported failure to comply with the Committee's subpoenas (including, notably, a number of "priority" documents identified by the Committee). These "priority" documents identified by the Committee are within a limited subset that is firmly protected from disclosure by the deliberative process, attorney-client communications, or attorney work product components of executive privilege. The Departments have been consistent—as have the courts considering the reinstatement of the citizenship question on the 2020 Decennial Census—that the documents the Committee seeks are protected from disclosure by these time-honored privileges. In order to ensure the free-flow of advice and decision making and to avoid compromising the ongoing litigation, we have not waived those privileges.

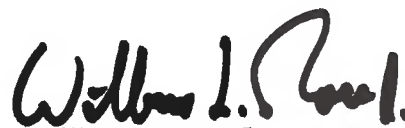
The Departments have already accommodated numerous Committee requests. The key remaining issue is how the Departments and the Committee will address the material that is protected by privileges that have been repeatedly reaffirmed by the courts. There is no information to hide; there are institutional integrities to preserve. Given that the Departments have been responsive and accommodating to the Committee's requests, it is unreasonable, counterproductive, and contrary to the constitutionally mandated accommodation process that the Committee would do so little to accommodate the Executive Branch's legitimate confidentiality interests.

Accordingly, we urge that the House postpone the contempt vote in order to allow the constitutionally mandated accommodation process to continue. And we respectfully remind the Committee that the constitutionally required obligation to engage in good-faith accommodation cuts both ways.

Sincerely,



William P. Barr
Attorney General



Wilbur L. Ross, Jr.
Secretary of Commerce

cc: The Honorable Kevin McCarthy, Republican Leader
The Honorable Elijah Cummings, Chairman, Committee on Oversight and Reform
The Honorable Jim Jordan, Ranking Member, Committee on Oversight and Reform